

1 BRIAN FAHLING, WSBA #18894  
2 Law Office of Brian Fahling  
3 559 Old Mill Rd  
4 Sandpoint, ID 83864  
5 (425) 802-7326

6 ERIC KNIFFIN  
7 Kniffin Law PLLC  
8 102 S. Tejon St., Suite 1100  
9 Colorado Springs, CO 80903  
10 (719) 212-4391

11 ERIC JOB SEESE  
12 Frost Brown Todd LLP  
13 1801 California Street, Suite 2700  
14 Denver, CO 80202  
15 (303) 406-4990

16 **UNITED STATES DISTRICT COURT**  
17 **EASTERN DISTRICT OF WASHINGTON**

18 NICHOLAS ROLOVICH,

19 Plaintiff,

20 v.

21 WASHINGTON STATE  
22 UNIVERSITY,

23 Defendant.

NO. 2:22-cv-00319

**PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

September 23, 2024  
Without Oral Argument

24 PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGEMENT  
NO. 2:22-cv-00319-TOR

**LAW OFFICE OF BRIAN FAHLING**  
559 Old Mill Rd  
Sandpoint, ID 83864  
(425) 802-7326  
E: bfahling@fahlinglaw.com

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## INTRODUCTION

Nick Rolovich (“Rolovich”) holds a bona-fide religious belief that conflicted with Washington State University’s (“WSU”) 2021 COVID-19 vaccine requirement. Rolovich explained these religious convictions in his application for a religious exemption. P’s Stmt. Undisputed Material Facts (P’s Stmt.) ¶¶ 19–26. WSU’s review committee, applying standards developed by the Washington Attorney General’s Office and with that office’s assistance available upon request, P’s Stmt. ¶ 29, determined that Rolovich’s exemption request was “based on a sincerely held religious belief.” P’s Stmt. ¶ 41. WSU’s leadership—which was under substantial pressure from WSU alumni, supporters, and employees, among others, P’s Stmt. ¶ 18—abruptly reversed course and instead found that Rolovich did “not have a sincerely held religious belief that conflicts with the University’s vaccine requirement.”<sup>1</sup> P’s Stmt. ¶ 51.

Under the constraints placed on courts by Title VII caselaw, and applicable First Amendment caselaw, no reasonable jury could find that Rolovich has failed to meet his *prima facie* burden under his Title VII failure to accommodate claim. The

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<sup>1</sup> Despite Plaintiff’s best efforts, discovery has not revealed any details regarding (a) who at WSU made the decision that Plaintiff’s opposition was not religious in nature and (b) the process by which WSU did an about-face on its initial determination that Plaintiff’s exemption request was based on a sincerely held religious belief. This is because WSU has invoked the attorney-client over the hundreds of documents and numerous conversations through which that decision was reached. *See, e.g.*, P’s Stmt. ¶¶ 45–46.

undisputed evidence in the record establishes (a) that Rolovich held a religious belief, (b) that belief conflicted with an employment requirement (the vaccine requirement or mandate), and (c) WSU terminated him for his inability to comply with the vaccine mandate. Although there is a dispute as to whether WSU could accommodate Rolovich's objection without "undue hardship," which will require resolution at trial, the Court should grant partial summary judgment in favor of Rolovich as to his *prima facie* case for the Title VII failure to accommodate claim. Such a ruling will streamline the issues for resolution at trial, promote judicial economy, and conserve the litigation resources of the Parties.

### STANDARD OF REVIEW

For a motion seeking partial summary judgment, courts apply the same standard as a motion seeking summary judgment of the entire case. *Kennedy v. U.S. Citizenship & Immigr. Servs.*, 871 F. Supp. 2d 996, 1006 (N.D. Cal. 2012). A motion for summary judgment should be granted if "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." *See*, Fed.R.Civ.P. 56(a); *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).. Motions for partial summary judgment serve judicial economy by narrowing the issues for trial. *Parks v. Ethicon, Inc.*, No. 20CV989-LL-RBB, 2022 WL 17972162, at \*2 (S.D. Cal. Aug. 30, 2022).

### ARGUMENT

"To establish religious discrimination on the basis of a failure-to-accommodate theory," a plaintiff

must first set forth a *prima facie* case that (1) he had a bona-fide religious belief, the practice of which conflicts with an employment duty; (2) he informed his employer of the belief and conflict; and (3) the employer



1 discharged, threatened, or otherwise subjected him to an adverse  
2 employment action because of his inability to fulfill the job requirement.

3 *Kennedy v. Bremerton Sch. Dist.*, 991 F.3d 1004, 1022 (9th Cir. 2021), *rev'd on*  
4 *other grounds*, 597 U.S. 507 (2022); *see also Beuca v. Washington State Univ.*, No.  
5 2:23-CV-0069-TOR, 2023 WL 3575503, at \*2 (E.D. Wash. May 19, 2023), *rev'd on*  
6 *other grounds*, No. 23-35395 (9th Cir. Jul. 18, 2024). “The burden of establishing a  
7 *prima facie* case of disparate treatment is not onerous.” *Lyons v. England*, 307 F.3d  
8 1092, 1112 (9th Cir. 2002) (quoting *Texas Dep’t of Cmty. Affairs v. Burdine*, 450  
9 U.S. 248, 253 (1981)).<sup>2</sup>

10 The Parties’ dispute was limited to the first element of Rolovich’s *prima facie*  
11 case. There is no dispute that Rolovich satisfies the second element: Rolovich’s  
12 application for a religious exemption informed WSU of the conflict between his  
13 religious beliefs and the vaccine mandate. P’s Stmt. ¶¶ 19–26. Likewise, there is no  
14 dispute that Rolovich satisfies the third element: WSU terminated Rolovich’s  
15 employment because of his inability to cooperate with the vaccine mandate. P’s  
16 Stmt. ¶ 49.

17  
18  
19  
20 <sup>2</sup> A failure to accommodate claim is a type of disparate treatment claim. *EEOC v.*  
21 *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015); *see also Brown v. Alaska*  
22 *Airlines, Inc.*, 2:22-cv-668, 2024 WL 235058, \*14, n. 5 (W.D. Wash. May 22, 2024)  
23 (“It is clear that ‘failure-to-accommodate’ is not a separate cause of action under  
24 Title VII, but a theory on which a plaintiff may bring its disparate treatment claim.”).

**A. The Court need only find that Rolovich had a bona fide religious objection to the vaccine mandate to grant partial summary judgment.**

While the question as to whether Rolovich’s reasons for opposing the vaccine mandate count as a “bona fide religious belief” involve questions of fact, this inquiry is carefully circumscribed by the Title VII and First Amendment law. In *Thomas v. Review Board of the Indiana Employment Security Division*, the Supreme Court reversed the Indiana Supreme Court’s determination that Thomas’ opposition to working on tank turrets was based on a “personal philosophical choice rather than a religious choice.” 450 U.S. 707, 715–16 (1981). Just last month, the Sixth Circuit cited *Thomas* in reversing the district court’s ruling that an employee’s opposition to receiving a COVID vaccine was not based on a bona fide religious belief but rather “medical in nature.” *Sturgill v. Am. Red Cross*, No. 24-1011, 2024 WL 3886589, \*4 (6th Cir. Aug. 21, 2024). The Sixth Circuit found the district court’s analysis—disregarding the plaintiff’s stated religious reason for seeking an accommodation on the basis that the court judged the plaintiff’s rationale “medical in nature”—was “contrary to our First Amendment jurisprudence, which commands that courts may not question the veracity of one’s religious beliefs.” *Id.* “In sum, that there may be both religious and secular reasons for an act does not elevate the latter over the former[.]” *Id.* at 5. As this Court has recognized, “both the Ninth Circuit and the Supreme Court have cautioned against second-guessing the reasonableness of an individual’s asserted religious beliefs.” *Beuca*, 2023 WL 3575503, at \*2 (citing *Bolden-Hardge v. Off. of California State Controller*, 63 F.4th 1215, 1223 (9th Cir. 2023), *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014)).

1 WSU claimed Rolovich “[did] not have a sincerely held religious belief that  
2 conflicts with the University’s vaccine requirement.” P’s Stmt. ¶ 51. WSU further  
3 claimed that Rolovich’s “personal or philosophical beliefs do not give an individual  
4 a basis to claim a religious exemption.” P’s Stmt. ¶ 51. *See also* ECF No. 31 at 2  
5 (“Rolovich’s stated vaccine objections are not religious in nature.”); P’s Stmt. ¶¶ 55,  
6 56 (conclusions of WSU’s experts).

7 However, this determination occurred after WSU’s review committee had already  
8 concluded that Rolovich’s exemption request was “based on a sincerely held  
9 religious belief.” P’s Stmt. ¶ 41. The challenge to WSU’s conclusion occurred after  
10 the Athletics’ Department questioned WSU’s review committee’s finding. P’s Stmt.  
11 ¶ 44. Rolovich’s stated religious belief in his exemption request and his discussions  
12 with colleagues should not conflate one over the other, and Rolovich’s religious  
13 belief should not be subject to second-guessing. *Beuca*, 2023 WL 3575503, at \*2.

14 **B. Title VII and First Amendment caselaw carefully circumscribe the**  
15 **Court’s role in resolving this question.**

16 District courts in this circuit “have grappled with the contours of the first *prima*  
17 *facie* element.” *Marshall v. Kaiser Found. Health Plan of the Northwest*, No. 3:23-  
18 CV-01324-JR, 2024 WL 1913647, at \*3 (D. Or. Apr. 16, 2024), *R. & R. adopted sub*  
19 *nom. Marshall v. Kaiser Found. Health Plan of the Nw.*, No. 3:23-CV-1324-JR,  
20 2024 WL 1912540 (D. Or. May 1, 2024). Courts must take into account that “Title  
21 VII broadly defines religion.” *Id.* Additionally, given the constraints grounded in  
22 both the Establishment Clause and the Free Exercise Clause, “American courts are  
23 loath to tell a person that his interpretation of his faith is a wrong one.” *Id.* (citations  
24 omitted).

1 “[T]he resolution of [whether a belief is religious] is not to turn upon a judicial  
2 perception of the particular belief or practice in question; religious beliefs need not  
3 be acceptable, logical, consistent, or comprehensible to others in order to merit First  
4 Amendment protection.” *Thomas*, 450 U.S. at 714. “Courts should not undertake to  
5 dissect religious beliefs because the believer admits that he is ‘struggling’ with his  
6 position or because his beliefs are not articulated with the clarity and precision that a  
7 more sophisticated person might employ.” *Id.* at 715. *See also Doe v. San Diego*  
8 *Unified Sch. Dist.*, 19 F.4th 1173, 1176 n.3 (9th Cir. 2021) (“We may not and do not  
9 question the legitimacy of Jill Doe’s religious beliefs regarding COVID-19  
10 vaccinations.”). The government’s negative appraisal of an individual’s professed  
11 religious beliefs can itself violate the First Amendment. *Masterpiece Cakeshop, Ltd.*  
12 *v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1729 (2018) (commission violated  
13 Phillips’ Free Exercise rights when it characterized his religious beliefs “as merely  
14 rhetorical—something insubstantial and even insincere”).

15 As discussed above, Rolovich established a religious belief in his request for  
16 exemption from the vaccine mandate, and that such religious belief conflicted with the  
17 vaccine mandate. As such, it is proper as a matter of law to grant summary judgment  
18 on the first element of Rolovich’s Title VII failure to accommodate claim.

19 **C. An employer cannot defeat a failure to accommodate claim by**  
20 **emphasizing the plaintiff’s non-religious considerations.**

21 The Equal Employment Opportunity Commission (“EEOC”) guidance and binding  
22 precedent preclude this Court from concluding on this basis that Rolovich lacks a  
23 bona fide religious belief. The law is clear: no quantity of evidence about an  
24 employee’s scientific or political beliefs would itself justify a government employer

1 or a court to conclude that the employee lacks a bona fide religious belief that  
2 conflicts with an employment requirement. WSU denies that Rolovich’s opposition  
3 to the vaccine mandate is “religious in nature” because it contends that he had  
4 frequently voiced “opposition to the vaccine” based on his “own ‘scientific’ research  
5 and making statements mirroring several specific online conspiracy theories.” P’s  
6 Stmt. ¶ 51.

7 The EEOC has firmly opined that while “Title VII does not protect objections to a  
8 COVID-19 vaccination requirement that are *purely* based on social, political, or  
9 economic views or personal preferences.” *What You Should Know About COVID-19*  
10 *and the ADA, the Rehabilitation Act, and Other EEO Laws*, EEOC (Oct. 25, 2021),  
11 available at [https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L)  
12 [and-ada-rehabilitation-act-and-other-eeo-laws#L](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L) (emphasis added). As the EEOC  
13 states in its Compliance Manual, “overlap between a religious and political view  
14 does not place it outside the scope of Title VII’s religious protections, as long as the  
15 view is part of a comprehensive religious belief system.” EEOC, *Compliance*  
16 *Manual, Section 12: Religious Discrimination*, § 12-I(A)(1) (Jan. 15, 2021) (citing  
17 *Fallon v. Mercy Catholic Med. Ctr. of Se. Pa.*, 877 F.3d 487, 492 (3d Cir. 2017),  
18 collecting other cases).

19 The Ninth Circuit has relied on this EEOC guidance, as did WSU in reviewing  
20 religious exemption requests. *Doe*, 19 F.4th at 1180; P’s Stmt. ¶¶ 38–40. *See also*  
21 *Marshall*, 2024 WL 1913647 at \*3-4 (citing the EEOC’s “overlap” principle before  
22 noting that “while plaintiff may have also relied on his medical and/or secular beliefs  
23 surrounding the safety of the COVID-19 vaccine and the sanctity of his body, it cannot  
24 be denied that he expressly identified his religious belief that ‘abortion is murder.’”).

1 This principle was embedded in Ninth Circuit precedent long before the COVID-  
2 19 pandemic. *Callahan v. Woods* turned on whether Callahan had a sincere religious  
3 belief to support his First Amendment claim, which sought to protect his right to  
4 refrain from getting his daughter a social security number. 658 F.2d 679 (9th Cir.  
5 1981). The Ninth Circuit reversed the district court's finding that plaintiff's belief  
6 was non-religious, identifying two principal errors in the district court's analysis.  
7 First, the district court found that Callahan's "aversion to identification numbers  
8 predated by many years his religious awakening." *Id.* at 684. But, the Ninth Circuit  
9 rejected the district court's "underlying premise that a long-held secular belief  
10 invalidates First Amendment protection for a related but newly-alleged religious  
11 belief." *Id.* While there is a possibility that a person "seeking to advance a secular  
12 interest might, if frustrated in his pursuit, decide to mask the cause in religious garb,"  
13 "the presence of longstanding secular objections" did not itself invalidate his claim.  
14 *Id.* This factor only goes to the plaintiff's sincerity: whether the "theological  
15 overtones" to his objection were "fictitious trappings for longstanding secular  
16 concerns." *Id.* As the government did not claim Callahan had "attempted to  
17 perpetrate a sham" on it or the court, *Callahan v. Woods*, 479 F. Supp. 621, 624  
18 (N.D. Cal. 1979), the Ninth Circuit found for Callahan. *Callahan*, 658 F.2d at 684.

19 Second, the Ninth Circuit found the district court erred by rejecting Callahan's  
20 assertion of religion in his claim based on its assessment that his opposition to the  
21 "use of numbers as identifiers" was rooted more in his "dehumanizing" experience  
22 in prison than "his subsequent religious activity." *Callahan*, 479 F. Supp. at 625. The  
23 Ninth Circuit held that "a coincidence of religious and secular claims in no way  
24 extinguishes the weight appropriately accorded the religious one." *Callahan*, 658

1 F.2d at 684. This directly goes to Rolovich’s religious belief here as asserted in his  
2 Title VII failure to accommodate claim, and WSU’s improper determination that  
3 other personal or philosophical beliefs invalidated Rolovich’s religious beliefs that  
4 conflicted with the vaccine mandate.

5 The Ninth Circuit also relied on *Wisconsin v. Yoder*, where the Amish  
6 community’s religious objection to mandatory public education was rooted in its  
7 practical judgment that “high school tends to emphasize intellectual and scientific  
8 accomplishments, self-distinction, competitiveness, worldly success, and social life  
9 with other students,” and that this environment would “place[] Amish children in an  
10 environment hostile to Amish beliefs.” *Wisconsin v. Yoder*, 406 U.S. 205, 211  
11 (1972). The Ninth Circuit emphasized that the Amish’s negative appraisal of the  
12 local high school did not undermine its Free Exercise Claim. *Callahan*, 658 F.2d at  
13 684. Similarly,

14 [t]he devout Seventh-Day Adventist may enjoy his Saturday leisure; the  
15 Orthodox Jew or Mohammedan may dislike the taste of pork. Such  
16 personal considerations are irrelevant to an analysis of the claimants’  
17 free exercise rights, so long as their religious motivation requires them  
to keep the Sabbath and avoid pork products. Religious duties need not  
contradict personal values or preferences in order to be protected.

18 *Id.* The court concluded that, even if it “might be argued that Callahan’s personal  
19 animus toward numbers would itself have been enough to motivate his refusal,” his  
20 sincere religious objection “would provide a separate and sufficient reason for his  
21 action, one that . . . merits constitutional protection.” *Id.* at 684–85. Accordingly, the  
22 Ninth Circuit reversed the district court, finding that plaintiff’s religious objections  
23 “are sincerely held and religious in nature.” *Id.* at 687.  
24



1 Applied to this case, the relevant issue is not—as WSU would have it—whether  
2 Rolovich made too many public statements in “the realm of safety concerns and  
3 conspiracy concerns” and not enough “religious objections to vaccinations” in the  
4 months leading up to his termination. *C.f.* P’s Stmt. ¶ 55. The issue is instead  
5 whether Rolovich had a bona fide religious belief that “would provide a separate and  
6 sufficient reason” for his refusal to take a COVID vaccine. Here, as in *Callahan*, the  
7 answer to that question is plainly yes.

8 *Callahan* remains relevant in Title VII failure to accommodate cases involving  
9 COVID-19 vaccine mandates. Last month, in *Sturgill*, the Sixth Circuit rejected an  
10 employer’s argument that closely parallels WSU’s rationale for rejecting Rolovich’s  
11 exemption request. 2024 WL 3886589. Like WSU, the American Red Cross argued  
12 that Sturgill’s conflict did not qualify for Title VII protection because her “objection  
13 to the COVID-19 vaccine sounded in medical and personal judgments.” *Sturgill*,  
14 Plaintiff-Appellant, v. *American Red Cross*, Defendant-Appellee., 2024 WL  
15 1556186, at \*13–14. Like WSU, Sturgill’s employer argued that she opposed the  
16 mandate “because she views the vaccine to be unsafe not because it offends her  
17 moral conscience due to a practice or observance that is religious in nature.” *Id.* at  
18 \*21–22. “She has not cited to any tenet of the Lutheran church that opposes western  
19 medicine in general or the COVID vaccine specifically. *Id.* at \*22–23.

20 The district court agreed with Sturgill’s employer, finding that her opposition to  
21 receiving a COVID vaccine were “medical” in nature. *Sturgill v. Am. Red Cross*, No.  
22 22-CV-11837, 2023 WL 8701293, at \*8 (E.D. Mich. Dec. 15, 2023). Valid religious  
23 objections, the court reasoned, are those that “ha[ve] nothing to do with their belief  
24 in its safety.” *Id.* The Sixth Circuit roundly rejected the district court’s analysis as



1 “contrary to our First Amendment jurisprudence, which commands that courts may  
2 not question the veracity of one’s religious beliefs.” *Sturgill*, 2024 WL 3886589 at  
3 \*4. The Sixth Circuit further established that “[i]t is not within the judicial ken to  
4 question the centrality of particular beliefs or practices to a faith.” *Id.* (quoting  
5 *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989)). “In sum,” the court said, “that  
6 there may be both religious and secular reasons for an act does not elevate the latter  
7 over the former.” *Id.* at 5 (emphasis added) (citing *Callahan*, 658 F.2d at 684).

8 **D. The question before the Court is instead whether Rolovich has**  
9 **articulated a religious belief with specificity.**

10 As noted above, Title VII failure to accommodate claims do not fail because a  
11 plaintiff’s articulated religious objections are also rooted in scientific or personal  
12 judgments. Instead, when courts have ruled against plaintiffs in COVID-19 vaccine  
13 failure to accommodate claims, it is because the plaintiffs failed to adequately  
14 articulate their religious exemptions. *See, e.g., Stephens v. Legacy-GoHealth Urgent*  
15 *Care*, 2023 WL 7612395, 4-6 (D. Or. Oct. 23), *R. & R. adopted sub nom. Stephens v.*  
16 *Legacy Health*, No. 3:23-CV-00206-SB, 2023 WL 7623865 (D. Or. Nov. 14, 2023)  
17 (describing “[g]eneral references to Christianity” as “conclusory”); *Maggio v.*  
18 *Oregon Health & Sci. Univ.*, No. 3:23-CV-00116-JR, 2024 WL 665991, at 6 (D. Or.  
19 Jan. 8, 2024), *R. & R. adopted*, No. 3:23-CV-116-JR, 2024 WL 665089 (D. Or. Feb.  
20 16, 2024) (citing case where Title VII plaintiff dismissed after invoking “vaguely  
21 religious language”); *Burton v. Legacy Health*, No. 3:23-CV-01528-JR, 2024 WL  
22 1241612, at \*3 (D. Or. Feb. 28, 2024), *R. & R. adopted*, No. 3:23-CV-1528-JR, 2024  
23 WL 1241450 (D. Or. Mar. 22, 2024) (citing case dismissing Title VII claim where  
24

1 plaintiff failed to “describe any particular beliefs [or] provide even a perfunctory  
2 explanation as to how her beliefs conflict with receiving a COVID-19 vaccine”).

3 Conversely, courts recognize a bona fide religious belief when Title VII  
4 plaintiffs’ objections are rooted in identified religious teachings and when their  
5 religious convictions were developed through study and consultation with religious  
6 authorities. *See Quinn v. Legacy Health*, No. 3:23-CV-00331-JR, 2023 WL  
7 10354251, at \*5 (D. Or. June 16, 2023), *R. & R. adopted*, No. 3:23-CV-00331-JR,  
8 2024 WL 620344 (D. Or. Feb. 13, 2024) (noting plaintiff’s invocation of “her anti-  
9 abortion stance, guidance from spiritual leaders, and the use of fetal cells in  
10 developing Covid-19 vaccines”); *Denton v. Shriners Hosp. for Child.*, No. 3:23-CV-  
11 00826-JR, 2024 WL 1078280, at \*3 (D. Or. Feb. 8, 2024), *R. & R. adopted*, No.  
12 3:23-CV-826-JR, 2024 WL 1075324 (D. Or. Mar. 12, 2024) (“invocation of an anti-  
13 abortion stance, guidance from spiritual leaders, and the use of fetal cells in  
14 developing COVID-19 vaccines appropriately alleged a bona fide religious belief.”).

15 Rolovich brought his troubled conscience to a Catholic priest, who listened to his  
16 concerns and helped him understand his disquiet in terms of Catholic teaching on the  
17 moral conscience. P’s Stmt. ¶¶ 4–10, 14–15. By the time Rolovich submitted his  
18 request for a religious exemption, Rolovich had also conferred his bishop, whom he  
19 had known for more than thirty years. P’s Stmt. ¶¶ 11–13. Rolovich’s exemption  
20 request was also based on his review of the Catechism of the Catholic Church and  
21 other Catholic teaching materials from his own diocese, the National Catholic  
22 Bioethics Center, the United States Conference of Catholic Bishops (USCCB), and  
23 the Vatican. P’s Stmt. ¶¶ 8, 9, 20, 26.

1 Rolovich detailed the nature of his religious convictions in the request for a  
2 religious exemption he submitted to WSU on October 4, setting out two main  
3 reasons, each grounded in Catholic doctrine. P's Stmt. ¶¶ 21–26. First, he explained,

4 The Roman Catholic Church teaches that I am required to refuse a  
5 medical intervention, including a vaccination, when my conscience has  
6 come to sure judgment that, as in this case, accepting the vaccine will  
7 make me complicit in the abortions that produced the human cell lines  
8 from which currently available vaccines are ultimately derived.

9 P's Stmt. ¶ 22.

10 Second, Rolovich grounded his religious opposition on the Catholic Church's  
11 teaching concerning therapeutic proportionality, a principle which states that  
12 Catholics are obliged to make "an assessment of whether the benefits of a medical  
13 intervention outweigh the undesirable side-effects and burdens in light of the integral  
14 good of the person, including spiritual, psychological, and bodily goods." P's Stmt.  
15 ¶ 23.

16 Rolovich also provided detailed annotations to support his exemption request,  
17 with paragraph or footnote-specific references to the Catechism of the Catholic  
18 Church, a document from the Vatican's Congregation for the Doctrine of the Faith  
19 entitled "Note on the Morality of Using some Anti-COVID-19 Vaccines," and from  
20 the USCCB's "Ethical and Religious Directives for Catholic Health Services." P's  
21 Stmt. ¶ 26.

22 WSU's review committee, following the procedures that WSU had publicly  
23 committed itself to, and applying standards that were developed in concert with the  
24 Washington Attorney General's office, found that Rolovich's exemption request was  
"based on a sincerely held religious belief." P's Stmt. ¶ 41. Finally, if there was

1 remaining any grounds to doubt his sincerity, Rolovich held fast to his convictions,  
2 at great risk to his public reputation, his professional prospects, and his livelihood.

3 None of the arguments that WSU gave for terminating Rolovich unseats these  
4 facts. Nothing has been uncovered in discovery and WSU's expert witnesses have  
5 not identified anything in their reports that disputes these facts of Rolovich's  
6 religious belief. Under the legal principles set out above, the undisputed facts show  
7 that Rolovich has satisfied his *prima facie* burden under a Title VII failure to  
8 accommodate claim. No reasonable jury could deny that Rolovich had a bona fide  
9 religious belief that conflicted with WSU's vaccine mandate.  
10

### 11 CONCLUSION

12 For the reasons provided above, Plaintiff Nicholas Rolovich respectfully requests  
13 that the Court grant

- 14 a) summary judgment on the first element of Rolovich's *prima facie* case for  
15 the Title VII failure to accommodate claim, that Rolovich has a religious  
16 belief which conflicted with WSU's vaccine mandate.
- 17 b) summary judgment on the second element of Rolovich's *prima facie* case  
18 for his Title VII failure to accommodate claim, that Rolovich informed  
19 WSU of his religious belief and conflict.
- 20 c) summary judgment on the third element of Rolovich's *prima facie* case for  
21 his Title VII failure to accommodate claim, that Rolovich was terminated  
22 by WSU for Rolovich's inability to comply with the vaccine mandate, a job  
23 requirement.

24 DATED this 23rd day of September, 2024.

PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
NO. 2:22-cv-00319-TOR - 14

LAW OFFICE OF BRIAN FAHLING  
559 Old Mill Rd  
Sandpoint, ID 83864  
(425) 802-7326  
E: bfahling@fahlinglaw.com

**LAW OFFICE OF BRIAN FAHLING**

/s/ Brian Fahling

Brian Fahling WSBA #18894

559 Old Mill Rd

Sandpoint, ID 83864

Tele: 425.802.7326

Email: bfahling@fahlinglaw.com

**KNIFFIN LAW PLLC**

/s/ Eric Kniffin

Eric Kniffin CO Bar # 48016

102 S. Tejon Street, Suite 1100

Colorado Springs, CO 80903

Tele: 719-212-4391

Email: [eric@kniffin.law](mailto:eric@kniffin.law)

*Admitted pro hac vice*

**FROST BROWN TODD LLP**

/s/ E. Job Seese

E. Job Seese, CO Bar # 48379

Michael A. Freimann, CO Bar #35430

Mamie Ling, CO Bar #49483

Meredith Grant, CO Bar #59667

1801 California Street, Suite 2700

Denver, CO 80202

Tele: 303.623.9000

jseese@fbtlaw.com

mfreimann@fbtlaw.com

maling@fbtlaw.com

mgrant@fbtlaw.com

Tel.: (303) 406-4990

*Admitted pro hac vice*

*Attorneys for Plaintiff*

# CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 2024, I electronically filed the foregoing MOTION FOR PARTIAL SUMMARY JUDGMENT with the Clerk of Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that none of the represented parties are non-CM/ECF participants.

By: /s/ E. Job Seese  
E. Job Seese

PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
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**LAW OFFICE OF BRIAN FAHLING**  
559 Old Mill Rd  
Sandpoint, ID 83864  
(425) 802-7326  
E: [bfahling@fahlinglaw.com](mailto:bfahling@fahlinglaw.com)